

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LEE JENKINS,

Plaintiff, No. CIV S-04-2520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,

Defendant. ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On September 12, 2006, this action was dismissed for failure to state a claim upon which relief may be granted. Judgment was entered on the same day. On September 22, 2006, plaintiff filed a request for reconsideration of that order. On October 31, 2006, plaintiff filed a notice of appeal and a second motion for reconsideration.

The court will construe plaintiff's motions for reconsideration as a motion for relief from judgment under Fed. R. Civ. P. 60(b). Rule 60(b) of the Federal Rules of Civil Procedure provides in relevant part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence,

surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

Fed. R. Civ. P. 60(b). "Motions for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure are addressed to the sound discretion of the district court." Allmerica Financial Life Insurance and Annuity Company v. Llewellyn, 139 F.3d 664, 665 (9th Cir. 1997).

This action was dismissed for failure to state a claim because, despite being provided two opportunities to file an amended complaint, plaintiff failed to assert a specific constitutional deprivation. Plaintiff's motions for reconsideration do not address this failure; rather, plaintiff states that he requests to "amend his relief requested." (Motions at 2.)

Plaintiff has not shown grounds that require or justify relief from the judgment entered in this action. Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's September 22, 2006 and October 31, 2006 motions for reconsideration are denied; and

2. The Clerk of the Court is directed to serve a copy of this order on the United States Court of Appeals for the Ninth Circuit.

DATED: December 21, 2006.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT